

HEARINGS OVERVIEW

Board of Parole Hearings

Hearing Types

- Consultations
- Parole Consideration Hearings
 - ▣ Initial Parole Consideration Hearing
 - ▣ Subsequent Parole Consideration Hearing
 - ▣ Youth Offender Parole Consideration Hearing
 - ▣ Elderly Parole Consideration Hearing
 - ▣ Term Calculation Only Hearing
- Progress Hearing
- Parole Reconsideration Hearings (Formerly 3000.1 Hearings)
- Rescission Hearing
- Expanded Medical Parole Hearing



Consultation Hearings

Not a parole hearing

- Penal Code section 3041(a)
- An initial consultation is not a parole hearing because no decision is made affecting the parole date.

Timing As of January 1, 2014

PC 3041(a) as
amended by
Senate Bill 260
(Chapter 312)

The Board shall meet with each inmate during the sixth year prior to the inmate's minimum eligible parole release date (**five years before the initial suitability hearing**) to conduct an initial consultation.

Participants and Purpose

Participants

- A commissioner or a deputy commissioner
- The inmate

Purpose

- Review and document the inmate's conduct and activities
- Meet with the inmate
- Inform him or her about the parole hearing process
- Provide individual recommendations for work, programming, and behavior

Purpose of a Consultation Hearing

PC 3041(a)
as amended
by Senate Bill
260

The purposes are reviewing and documenting the inmate's activities and conduct pertinent to both parole eligibility and to the granting or withholding of post conviction credit.

Preparation for later hearings

Penal Code
3041(a)

During this consultation, the board shall:
provide the inmate information about:

- ❑ The parole hearing process, and
- ❑ legal factors relevant to his or her suitability or unsuitability for parole

Individualized recommendations

Penal Code
3041(a)

During this consultation, the board shall:

Make **individualized** recommendations to the inmate regarding his or her

- ▣ work assignments,
- ▣ rehabilitative programs, and
- ▣ institutional behavior.

Assistance at a consultation

Review DECS / BPH Form 1073

Reasonable Accommodation

- The Board must ensure that all inmates with disabilities are able to participate in a parole proceeding – effective communication
 - ▣ Staff Assistance for EOP, DDP, DSH, MHCB, TABE of 4.0 or less, presumptive for CCCMS
- Foreign language interpreter

Written Recommendations

Written recommendations: Within 30 days, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

BPH Form 1001-CON-Life Prisoner Consultation

Parole Consideration Hearings

Is the inmate suitable for parole?

Timing of Consideration Hearings

Initial Parole Consideration

- Held one year before the inmate reaches his minimum eligible parole date (MEPD)

Penal Code § 3041(a)

Subsequent Parole Consideration

- Hearing date depends on the denial length imposed at the previous hearing

Penal Code § 3041.5(a) (6)
CCR 15 § 2270

De Novo Hearing

Penal Code
3041.5 (c)

The Board shall conduct a parole hearing as a de novo hearing.

Findings made and conclusions reached in a prior parole hearing shall be considered but are not binding upon subsequent parole hearings.

Participants

- Panel: two or three members
 - ▣ If two panel members, at least one must be a commissioner
 - ▣ If three panel members, at least two must be commissioners
- Inmate
- **Inmate Attorney**
- A District Attorney representative
- Victim(s) and/or Victim's Next of Kin

Additional Participants / Attendees

Participants

- ▣ Interpreter (if Inmate needs)
- ▣ Victim or Victim's next of kin representatives
- ▣ BPH Legal Counsel to provide support to panel

Attendees

- ▣ Observers
- ▣ Media
- ▣ Two Correctional Officers

Inmate's Rights (15 CCR 2245-56)

- **Attorney representation**
- Notice of the Hearing
- Review of Central File / Response to contents
- Attend hearing, speak on his own behalf
- Present relevant documents

Inmate's Rights continued

- Impartial hearing panel
- Request postponement, waiver, stipulation, continuance (may not be granted – panel decides)
- Assistance (ADA, staff, language interpreter)
- Copy of transcript and decision

15 CCR 2245-2256

Qualified Youth Offender (PC 3051)

A prisoner who was under 18 years of age at the time of his or her controlling offense and has not committed a disqualifying offense after age 18.

Applies to inmates serving a determinate sentence as well.

Timing of hearing (Penal Code 3051(b)) Minimum Eligible Parole Date (MEPD) or Youth Offender Parole Eligibility Date (YPED)

Suitability Hearing for a Qualified Youth Offender

- The Board, in reviewing the inmate's suitability for parole shall give great weight to the "Youth Factors" (Penal Code 4801(c)):
 - ▣ the diminished culpability of juveniles as compared to adults,
 - ▣ the hallmark features of youth, and
 - ▣ any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.

Qualified Youth Offenders

Special features

- ❑ New or revised risk assessment – discussing youth factors
- ❑ Before age 18
- ❑ No disqualifying offenses
- ❑ DSL or lifers
- ❑ No separate track
- ❑ No term calculation

Hearing Panel must:

- ❑ Give “great weight” to youth factors in granting or denying parole AND
- ❑ Give “great weight” to youth factors in setting denial length (15, 10, 7, 5, or 3 years)

Elderly Offenders (started 10/1/14)

Special features

- ❑ Inmates who are **60 or older** AND in custody for **25 years** or more
- ❑ New or revised risk assessment
- ❑ DSL or lifers
- ❑ No separate track
- ❑ No term calculation

Hearing Panel receives:

- ❑ Risk Assessment discusses inmate's age, long-term confinement, diminished physical condition, if any
- ❑ Considers potential risk and determines suitability

Parole Grant

Decision
portion of the
hearing

- ❑ Panel gives reasons for its decision
- ❑ Calculates base term and adjusted base term
- ❑ Imposes special conditions of parole (if any)
- ❑ Reviews parole plans

Parole Denial

PC 3041

PC 3041.5(b)(3)

PC 3041.5(d)

- ❑ Panel states reasons on the record
- ❑ Makes recommendations to the inmate
- ❑ Imposes denial length (15, 10, 7, 5, 3 years)
- ❑ Advises inmate of Petition to Advance (PTA) process for an earlier hearing

Parole Denial – term calculations

In re Butler
Settlement
Agreement

15 CCR 2282

15 CCR 2403

If the inmate is appearing at his or her initial hearing;

Or if inmate has not previously had a term calculation done;

The panel in its denial decision calculates the inmate's base term and adjusted base term

Other outcomes

At a parole
consideration
hearing

15 CCR 2253

- ❑ Stipulation to unsuitability for 3, 5, 7, 10, or 15 years.
- ❑ Waiver of hearing for 1, 2, 3, 4, or 5 years
- ❑ Postponement
- ❑ Continuance

Term Calculation Only Hearings

- ❑ NOT a new parole consideration hearing
- ❑ A decision may be referred en banc for the sole purpose of recalculating the term calculation.
- ❑ If the board, while sitting en banc, votes in favor of recalculating the term, the inmate will be scheduled for a new hearing where ONLY the term calculation will be decided.
- ❑ All participants allowed at a parole consideration hearing are permitted at a term calculation only hearing

Progress Hearings

After a lifer has received a future parole date

When

- A progress hearing occurs if an inmate receives a parole grant at a suitability hearing and his or her parole release date is calculated to be a date in the future.
- He or she may receive progress hearings to advance his or her parole release date.

The progress hearing panel can:

15 CCR 2269

15 CCR 2290

15 CCR 2410

- ☐ Award additional post-conviction credit; or
- ☐ Refer the matter en banc for consideration of rescission if the inmate's behavior has been poor; or
- ☐ Affirm the current date "as is"

Participants

- Panel:

- ▣ two commissioners or

- ▣ one commissioner and a deputy commissioner

- Inmate

Prisoner's Rights (15 CCR 2245-55)

- **No attorney representation**
- Notice of the Hearing
- Review of Central File / Response to contents
- Attend hearing, speak on his or her own behalf

Prisoner's Rights continued

- Present relevant documents
- Impartial hearing panel
- Assistance (ADA, staff, language interpreter)

15 CCR 2245-2255



Parole Reconsideration Hearing

A lifer has violated parole

Formerly called a Penal Code 3000.1 Hearing

Penal Code
3000.1

New
Regulations
effective July
1, 2015

15 CCR 2275

15 CCR 2276

If a lifer inmate is paroled, violates his parole, and a court revokes his parole, a revocation hearing is held in the court.

For certain life term inmates, they are returned to CDCR custody and a Penal Code section 3000.1 hearing is held.

When a Parole Reconsideration hearing is held...

- If parole is revoked for a parolee sentenced to life imprisonment for **1st or 2nd degree murder**, offense date on or after January 1, 1983, or
- If parole is revoked for a parolee sentenced to life in prison for **specified sex crimes** against minors, offense date on or after September 9, 2010.

Court Revocation then Parole Reconsideration hearing

Court Revocation

County court holds revocation hearing to determine if sufficient evidence to support to charges. Parolee has opportunity to defend himself against charges.

Parole Reconsideration Hearing

After revocation hearing, for certain life term inmates, Board then holds a hearing, to determine the sentence for the parole violation.

Initial Parole Reconsideration Hearing

Board options:

1. Deny parole (retain the inmate in custody), or
2. Determine the inmate does not pose a current risk of dangerousness and grant parole

Subsequent Parole Reconsideration Hearing

After the initial parole reconsideration hearing, the inmate receives ANNUAL subsequent hearings.

Hearings are conducted as regular suitability hearings except no need to calculate a term for grant, or to set a denial length for a denial – the denial length is one year. New exception for new offenses.

Rescission Hearings

When a grant is in question

Purpose

PC 3041.5

PC 3041.7

15 CCR 2450
et seq.

- ❑ To determine if good cause exists to rescind a parole date.
- ❑ If no good cause exists, the rescission panel must allow the parole date to stand.
- ❑ Three person panels (two commissioners, one deputy commissioner)

Rescission Hearing Process

The rescission hearing process is different given the:

- Basis or Bases for Rescission, and
- Timing

Two types

New information

After inmate receives a grant, but before release, new information (disciplinary violation, psychological deterioration) suggests the grant should not stand

Improvident Grant

After inmate receives a grant, but before release, Governor or Chief Counsel refer a matter to examine if granting panel fully considered all information

Witnesses or not

New information

Evidentiary Hearing

Witnesses – inmate and board can call witnesses who observed / involved in event – no character witnesses

Improvident Grant

No witnesses, rescission panel limited to transcript of grant hearing.

Inmate, Inmate counsel, district attorney can comment on grant hearing transcript.

Expanded Medical Parole

Alternate Placement – Not Parole

Expanded Medical Parole (EMP)

PC 3550

Three Judge
Panel Order

The Board shall make an independent judgment regarding whether the conditions under which the inmate would be released pose a reasonable threat to public safety, and make written findings related thereto.

Board conducts these hearings for life term inmates and DSL inmates

EMP Hearing Participants

- Two or three person panel
- Inmate Attorney
- District Attorney Representative
- Victim(s) and or Victim's Next of Kin

Inmate is generally not present

EMP Written Decision

PC 3550

- Panel provides a written decision
- Hearing is recorded and transcribed



En Banc Proceedings

Monthly Executive Meeting

Executive Meeting

- Once a month, all commissioners meet (en banc) in Sacramento at Board Headquarters.
- Two day meeting.

Executive Meeting – Day One

- Monday afternoon – unless a holiday.
- Reports from:
 - Executive Officer
 - Chief Counsel
 - Scheduling, BITS, Investigations updates
- Administrative Directives
- Open Session Presentations
- Closed session training

Executive Meeting – Day Two

- Tuesday morning to midday
- Deputy Commissioners do not attend – prep day for hearings starting on Wednesday
- Public session –public comment on cases commissioners deciding en banc
- Closed session – commissioners vote on cases sent on en banc
- End of the day – decisions posted online and in lobby

En Banc cases

- ❑ Penal Code section 1170, subd. (e) – referral to sentencing court based on medical condition
- ❑ Tie votes
- ❑ Panel member referrals
- ❑ Governor Referrals on non-murder cases
- ❑ Chief Counsel referrals (issue or new information discovered during decision review)